

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JOHN E. MANNERY, JR.,

Plaintiff,

v.

Case No. 22-cv-547-bhl

CITY OF MILWAUKEE, et al.,

Defendants.

ORDER

On September 13, 2022, the Court dismissed this case based on failure to state a claim upon which relief could be granted. Dkt. Nos. 12-13. Plaintiff John E. Mannery appealed the decision and filed a motion for leave to appeal without prepayment of the filing fee. Dkt. Nos. 16 & 21. On November 28, 2022, the Court ordered Mannery to pay \$1.89 as an initial partial filing fee for his appeal by December 28, 2022. Dkt. No. 23.

On December 21, 2022, Mannery filed a motion for extension of time to pay the initial partial filing fee along with a motion to use his release account to pay the initial partial filing fee. Dkt. Nos. 24-25. The Prison Litigation Reform Act allows an inmate to use his release account to satisfy an *initial* partial payment if no other funds are available. *Robinson v. Tegels*, No. 13-CV-198-WMC, 2013 WL 1192485, at *1 (W.D. Wis. Mar. 22, 2013)(citing *Carter v. Bennett*, 399 F.Supp.2d 936, 936-37 (W.D. Wis. 2005). “If a petitioner does not have sufficient funds in his regular account to pay the full amount of the initial partial payment assessed to him, then prison officials will draw funds first from the prisoner’s regular account and any portion of the initial partial payment remaining from the prisoner’s release account fund.” *Carter*, 399 F. Supp. at 937.

Mannery's trust account statement shows that his regular account does not contain enough funds to pay the full amount of the initial partial payment assessed to him. *See* Dkt. No. 22. Accordingly, the Court will grant his motions and allow him to use his release account to pay the initial partial filing fee.

IT IS THEREFORE ORDERED that Mannery's motion for extension of time to pay the initial partial filing fee (Dkt. No. 24) is **GRANTED**. The deadline to pay the initial partial filing fee is extended to **February 9, 2023**.

IT IS FURTHER ORDERED that Mannery's motion to use his release account to pay the initial partial filing fee (Dkt. No. 25) is **GRANTED**. The agency having custody of Mannery shall collect \$1.89 from Mannery's release account and forward that sum to the Clerk of Court as payment for USCA Case No. 22-3042 on or before **February 9, 2023**.

Dated at Milwaukee, Wisconsin on January 9, 2023.

s/ Brett H. Ludwig

BRETT H. LUDWIG

United States District Judge